

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petitions for Designation as an	)	WC Docket No. 09-197
Eligible Telecommunications Carrier	)	WT Docket No. 10-208
For Purposes of Participation in Tribal Mobility	)	
Fund Phase I	)	
	)	
Petition of CSE Wireless, Inc. for Designation as	)	
An Eligible Telecommunications Carrier in North	)	
Carolina	)	

**ORDER**

**Adopted: December 4, 2013**

**Released: December 4, 2013**

By the Chief, Wireline Competition Bureau and the Acting Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this order, the Wireline Competition Bureau and the Wireless Telecommunications Bureau (the Bureaus) grant in part the petition of CSE Wireless, Inc. (CSE Wireless or the company) to be conditionally designated as an eligible telecommunications carrier (ETC), contingent upon CSE Wireless becoming authorized to receive support in Tribal Mobility Fund Phase I and limited to those areas in which it becomes so authorized.<sup>1</sup> We find that CSE Wireless meets the eligibility requirements of section 214(e)(6) of the Communications Act of 1934, as amended (the Act), and the Commission's rules to be designated as an ETC in North Carolina, subject to the condition specified above.<sup>2</sup> We

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<sup>1</sup> Erratum to Amended and Restated Petition of CSE Wireless, Inc. for Designation as an Eligible Telecommunications Carrier for Service Areas in the State of North Carolina, WC Docket No. 09-197, WT Docket No. 10-208 (filed Nov. 22, 2013); Amended and Restated Petition of CSE Wireless, Inc. for Designation as an Eligible Telecommunications Carrier for Service Areas in the State of North Carolina, WC Docket No. 09-197, WT Docket No. 10-208 (filed Nov. 20, 2013) (CSE Wireless Petition); Petition of CSE Wireless, Inc. for Designation as an Eligible Telecommunications Carrier for Service Areas in the State of North Carolina, WC Docket No. 09-197, WT Docket No. 10-208 (filed Sept. 17, 2013). If CSE Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I, CSE Wireless must, as a condition of being an ETC, offer Lifeline services and comply with all Lifeline rules in the areas in which it becomes authorized to receive Tribal Mobility Fund Phase I support, i.e., its ultimate service area. *See* 47 C.F.R. § 54.405. This order does not grant CSE Wireless Lifeline-only ETC designation. *See* 47 C.F.R. § 54, Subpart E, as amended. *See generally* Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23, Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Lifeline and Link Up, WC Docket No. 03-109, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Rcd 6656 ¶¶ 49, 230 (2012) (*Lifeline Reform Order*). Thus, under this designation, CSE Wireless is not eligible to receive Lifeline support nor obligated to provide Lifeline services except to the extent that it is authorized to receive Tribal Mobility Fund Phase I support.

<sup>2</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202.

condition the designation pursuant to the Commission's decision in the *USF/ICC Transformation Order* providing that conditional designations may satisfy the ETC designation requirement for participation in the Tribal Mobility Fund Phase I auction.<sup>3</sup>

## II. BACKGROUND

### A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>4</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.<sup>5</sup>

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs in their states.<sup>6</sup> Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>7</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>8</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>9</sup>

### B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission;<sup>10</sup> (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Act;<sup>11</sup> (3) a certification that the petitioner offers or intends to offer the supported

<sup>3</sup> Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17809 ¶ 439 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); 47 C.F.R. § 54.1003(a). This order in no way pre-judges the qualifications of CSE Wireless to participate in Auction 902 or become authorized to receive Tribal Mobility Fund Phase I support.

<sup>4</sup> 47 U.S.C. § 254(e).

<sup>5</sup> 47 U.S.C. § 214(e)(1).

<sup>6</sup> 47 U.S.C. § 214(e)(2).

<sup>7</sup> 47 U.S.C. § 214(e)(6).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 47 U.S.C. § 214(e)(1)(A). Section 54.101 of the Commission's rules, as recently revised, states: “Services designated for support. Voice Telephony services shall be supported by federal universal service support

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services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;”<sup>12</sup> (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution;”<sup>13</sup> and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission. Petitioners also must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in section 1.2002 of the Commission’s rules.<sup>14</sup>

5. Consistent with the service obligations all ETCs must satisfy in the public interest, a party petitioning for designation as an ETC must also: (1) certify that it will comply with the service requirements applicable to the support that it receives;<sup>15</sup> (2) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network throughout its proposed service area, estimating the area and population that will be served as a result;<sup>16</sup> (3) demonstrate that it will remain functional in emergency situations;<sup>17</sup> and (4) demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>18</sup> In particular, “[a] commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement”, *i.e.*, the final requirement of the preceding sentence.<sup>19</sup>

6. Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.<sup>20</sup> In determining the public interest, the

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mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.”

47 C.F.R. § 54.101. *See Lifeline Reform Order* at ¶¶ 49, 320. *See also* Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, *Order on Reconsideration*, 26 FCC Rcd 17633, 17634 ¶ 3 (2011).

<sup>12</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>13</sup> 47 U.S.C. § 214(e)(1)(B). 47 C.F.R. §§ 54.401 *et seq.* In addition, an ETC must advertise the availability of Lifeline service and, if eligible for such support, Link Up, in a manner reasonably designed to reach those likely to qualify for those services. In the recent *Lifeline Reform Order*, the Commission eliminated Link Up except for carriers that receive high-cost support on Tribal lands. *Lifeline Reform Order* at ¶ 254.

<sup>14</sup> 47 C.F.R. § 1.2002.

<sup>15</sup> 47 C.F.R. § 54.202(a)(1)(i).

<sup>16</sup> 47 C.F.R. § 54.202(a)(1)(ii).

<sup>17</sup> In particular, the petition must include a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. *See* 47 C.F.R. § 54.202(a)(2).

<sup>18</sup> 47 C.F.R. § 54.202(a)(3).

<sup>19</sup> *Id.* The Cellular Telecommunications and Internet Association is now known as CTIA-The Wireless Association. We use its former name in this Order because it appears in the text of 47 C.F.R. § 54.202.

<sup>20</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(b); *see also* Federal-State Joint Board on Universal Service, CC Docket No. 95-45, *Report and Order*, 20 FCC Rcd 6371, 6388-96 ¶¶ 40-57 (2005) (*ETC Designation Order*). The

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Commission considers a variety of factors, including the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>21</sup>

### C. Tribal Mobility Fund Phase I

7. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF) to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. To further achievement of that goal, the Commission created the Mobility Fund. In particular, the Commission provided that in Phase I of the Tribal Mobility Fund, it would award by reverse auction up to \$50 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in Tribal lands not presently covered by such networks.<sup>22</sup>

8. In the auction for Tribal Mobility Fund Phase I support, applicants will bid for the amount of support they need to meet the Tribal Mobility Fund Phase I service and other public interest obligations in the eligible census blocks covered by the geographic area on which they bid. Applicants, except for Tribally-owned and controlled entities, must be designated as ETCs in the areas on which they wish to bid prior to filing their auction applications.<sup>23</sup> In connection with the Tribal Mobility Fund, the Bureaus have delegated authority to grant or deny ETC designation petitions.<sup>24</sup> An ETC designation may be conditional subject to the receipt of Tribal Mobility Fund Phase I support.<sup>25</sup>

### D. CSE Wireless Petition

9. On September 17, 2013, CSE Wireless filed a request seeking designation as an ETC in a proposed area covering portions of North Carolina.<sup>26</sup> On September 19, 2013, the Bureaus released a public notice seeking comment on the CSE Wireless Petition.<sup>27</sup> The Bureaus released a Protective Order

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Commission places the burden on the ETC applicant to demonstrate that designation will serve the public interest. *Id.* at 6390 ¶ 44. The Commission adopted a single set of criteria for evaluating the public interest for ETC designations for areas served by both rural and non-rural carriers. *Id.* at 6389–90 ¶¶ 42–43.

<sup>21</sup> See *ETC Designation Order* at 6388–96 ¶¶ 40–57.

<sup>22</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17773 ¶ 299.

<sup>23</sup> See *id.* at 17798–99 ¶¶ 388–92; 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order* at 17823 ¶ 491; 47 C.F.R. § 54.1004(a).

<sup>24</sup> See 47 C.F.R. §§ 0.91(p) (functions of Wireline Competition Bureau), 0.131(r) (functions of Wireless Telecommunications Bureau), 0.291 (delegation of authority to Wireline Competition Bureau), 0.331 (delegation of authority to Wireless Telecommunications Bureau), *see also* Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, CC Docket No. 96-45, *Public Notice*, 12 FCC Rcd 22947, 22948 (1997) (express delegation with respect to ETC designations to predecessor to Wireline Competition Bureau) (*Section 214(e)(6) Public Notice*). See also Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, *Public Notice*, 27 FCC Rcd 2054 (2012).

<sup>25</sup> 47 C.F.R. § 54.1003(a). See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17798–99 ¶¶ 389, 392.

<sup>26</sup> See generally CSE Wireless Petition.

<sup>27</sup> Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on Petition to Designate CSE Wireless, Inc. an Eligible Telecommunications Carrier for Participation in Auction 902 – Tribal Mobility Fund Phase I, WC Docket No. 09-197, WT Docket No. 10-208, *Public Notice*, 28 FCC Rcd 13585 (2013).

so that interested parties might have a means of reviewing all the information submitted to the Commission.<sup>28</sup> No comments were received with respect to the substance of the CSE Wireless Petition.<sup>29</sup>

10. On November 20, 2013, CSE Wireless provided additional information and clarified its request to be designated as an ETC in a proposed area in North Carolina. CSE Wireless makes its petition in order to participate in Auction 902, the upcoming competitive bidding for support offered in Tribal Mobility Fund Phase I.<sup>30</sup> CSE Wireless states that it meets all of the eligibility requirements for ETC designation.<sup>31</sup> CSE Wireless also states that it will: (1) offer the services designated for support by the Commission pursuant to section 254(c) of the Act; (2) offer the supported services using its own facilities or a combination of its own and other facilities; and (3) advertise the availability of the supported services and associated charges using media of general distribution.<sup>32</sup>

### III. DISCUSSION

11. In this order, we consider whether CSE Wireless meets the requirements under the Act and the Commission's rules to be designated as an ETC in North Carolina, conditioned upon CSE Wireless becoming authorized to receive support in Tribal Mobility Fund Phase I and limited to those areas in which it becomes so authorized. After review of the record, we conclude that CSE Wireless meets the applicable requirements to be so designated.<sup>33</sup>

#### A. Commission Authority to Perform the ETC Designation

12. CSE Wireless cited an order from the North Carolina Utilities Commission (North Carolina Commission) as authority that the North Carolina Commission lacks jurisdiction to perform the requested ETC designation and, therefore, that the Commission has authority to consider the CSE Wireless Petition under section 214(e)(6) of the Act.<sup>34</sup> CSE Wireless thereby has demonstrated that it is not subject to the jurisdiction of the North Carolina Commission.<sup>35</sup> Accordingly, we find that the North

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<sup>28</sup> The Bureaus adopted a protective order limiting access to proprietary and confidential information that may be filed in WC Docket No. 09-197 and WT Docket No. 10-208 in connection with petitions filed for designation as an ETC for purposes of participation in any Mobility Fund auction. *See* Petitions For Designation As An Eligible Telecommunications Carrier For Purposes of Participation in Mobility Fund Auctions, WC Docket No. 09-197, WT Docket No. 10-208, *Protective Order*, 28 FCC Rcd 318 (2013). *See also* Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, *Protective Order*, 27 FCC Rcd 5281 (2012).

<sup>29</sup> *See* Bob Long email October 11, 2013 1:26PM Ex Parte Submission (regarding communications between CSE Wireless and the Eastern Band of Cherokee Indians), available at <http://appsint.fcc.gov/ecfs/document/view?id=7520953400>. All ETCs that receive Tribal Mobility Fund Phase I support, which may include CSE Wireless, will be obligated to engage with the respective Tribe or Tribes. 47 C.F.R. §§ 54.1004(d), 54.1009(a)(5).

<sup>30</sup> *See* CSE Wireless Petition at 5-8.

<sup>31</sup> *Id.* at 12-13.

<sup>32</sup> *Id.* at 12-13, 19.

<sup>33</sup> *See supra* n.1 (explaining that this Order does not designate CSE Wireless to become an ETC for Lifeline-only support).

<sup>34</sup> CSE Wireless Petition, Exhibit A, State of North Carolina Utilities Commission Certification Order.

<sup>35</sup> The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands. First, a carrier serving Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier. The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal (continued....)



Carolina Commission lacks jurisdiction to designate CSE Wireless as an ETC and this Commission has authority to perform the requested ETC designation in North Carolina.<sup>36</sup>

## B. Designated Service Area

13. We designate CSE Wireless as an ETC in North Carolina in those areas in which CSE Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I.<sup>37</sup> The Commission provided in the *USF/ICC Transformation Order* that a party must be an ETC to be eligible to compete for support available in Tribal Mobility Fund Phase I.<sup>38</sup> The Commission further provided that a party might meet this eligibility requirement with an ETC designation that was conditioned upon the receipt of Mobility Fund support.<sup>39</sup> In other words, the Commission would accept as sufficient for participation in the competitive bidding for Tribal Mobility Fund Phase I support an ETC designation that is conditioned upon the party becoming authorized to receive Tribal Mobility Fund Phase I support as a result of the bidding.

14. Depending upon the outcome of Auction 902, CSE Wireless might become authorized for Tribal Mobility Fund Phase I support in only a portion of a rural study area. The terms of section 214(e)(5) require that an ETC's service area conform to the study area of any rural telephone company within that area. CSE Wireless requests that the Commission forbear the application of section 214(e)(5) of the Act.<sup>40</sup> The Bureaus, however, recently issued an Order forbearing from application of the conformance requirement with respect to petitions for designation for purposes of participating in Tribal

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authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC and will proceed to the merits of the carrier's petition for designation. *See* Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas, WC Docket No. 09-197, *Memorandum Report and Order*, 25 FCC Rcd 12388, 12389, ¶ 4 (Wireline Comp. Bur. 2010) (*Standing Rock I Order*); Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation, WC Docket No. 09-197, *Memorandum Opinion and Order on Reconsideration*, 26 FCC Rcd 9160, 9161, ¶ 4 (2011) (*Standing Rock II Order*). *See also* Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming, Cellco Partnership d/b/a Bell Atlantic Mobile, Inc. Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12265-69, ¶¶ 115-27 (2000) (subsequent history omitted).

<sup>36</sup> 47 U.S.C. § 214(e)(6).

<sup>37</sup> CSE Wireless identified wire centers it seeks to serve in the CSE Wireless Petition. *See* CSE Wireless Petition, Exhibit B. Tribal Mobility Fund Phase I support, however, will be authorized based on census blocks. "Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902," AU Docket No. 13-53, *Public Notice*, 28 FCC Rcd 11628, 11633-34 at ¶ 12 (2013). Accordingly, CSE Wireless's final service area pursuant to this order will be defined by reference to census blocks, rather than by wire centers.

<sup>38</sup> 47 C.F.R. § 54.1003(a). *See also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, 17809 ¶¶ 389, 392, 439.

<sup>39</sup> 47 C.F.R. § 54.1003(a). *See also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99 ¶ 391 n.665.

<sup>40</sup> CSE Wireless Petition at 15-17.

Mobility Fund Phase I.<sup>41</sup> Accordingly, CSE Wireless's ETC service area may be limited to the area in which it receives support, in the event that CSE Wireless becomes authorized to receive support in only a portion of a relevant rural telephone company study area.

### C. Threshold Eligibility Requirements

15. CSE Wireless has established through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.<sup>42</sup> In addition, CSE Wireless has certified that it offers or will offer the supported services using its own facilities or a combination of its own and other facilities.<sup>43</sup> Consistent with the requirements of section 214(e)(1)(B), CSE Wireless has committed to advertise the availability of the supported services and the related charges "in a manner designed to inform the general public within its identified North Carolina ETC service area."<sup>44</sup>

16. CSE Wireless has identified with specificity in the CSE Wireless Petition wire centers within which it may seek support in Tribal Mobility Fund Phase I. As discussed above, in light of the conditional designation we provide in this order, CSE Wireless's ETC service area resulting from this order will consist of areas within the areas identified in the CSE Wireless Petition where CSE Wireless becomes authorized to receive Tribal Mobility Fund Phase I support. We conclude that a service area designated by these means meets the Commission's requirement.

17. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it nor any party to its application is subject to a denial of federal benefits, including Commission benefits.<sup>45</sup> CSE Wireless has provided a certified statement that meets the requirements of the Anti-Drug Abuse Act of 1988.<sup>46</sup> We find that CSE Wireless has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001–1.2003 of the Commission's rules.

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<sup>41</sup>Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended, Universal Service Reform – Mobility Fund, WC Docket No. 09-197, WT Docket No. 10-208, *Order*, DA 13-2318 (rel. Dec. 4, 2013) (*Tribal Mobility Fund Phase I Forbearance Order*). The Commission previously adopted a limited forbearance from those provisions with respect to ETC designations conditioned on receipt of support in Auction 901, the Mobility Fund Phase I auction. Connect America Fund, WC Docket No. 10-90 et al., *Second Report and Order*, 27 FCC Rcd 7856 (2012) (*Mobility Fund Phase I Forbearance Order*).

<sup>42</sup> CSE Wireless Petition at 19-22.

<sup>43</sup> *Id.* at 19; *see* 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1). CSE Wireless indicates that it may utilize resale of another carrier's service in conjunction with providing service on its own facilities. So long as it makes use of its own facilities in part, it may satisfy the requirement of offering the supported services with "a combination of its own and other facilities."

<sup>44</sup> 47 U.S.C. § 214(e)(1)(B); *see* CSE Wireless Petition at 22-23.

<sup>45</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)–(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); *see Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>46</sup> CSE Wireless Petition at 41.

#### D. Public Interest Service Obligations

18. CSE Wireless also has established through the required certifications and related filings that it meets the other requirements for ETC eligibility. CSE Wireless has (1) certified that it will comply with the service requirements applicable to the support that it receives;<sup>47</sup> (2) submitted a five-year plan containing the required information;<sup>48</sup> (3) demonstrated its ability to remain functional in emergency situations;<sup>49</sup> and (4) demonstrated that it will satisfy applicable consumer protection and service quality standards, by committing to compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.<sup>50</sup> Our determination that CSE Wireless has met these requirements takes into account the fact that, in the event that CSE Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I, it must provide information to the Commission regarding its project plans to meet the Tribal Mobility Fund Phase I service requirements as part of its post-auction application for support. Further, CSE Wireless will have to certify compliance with all requirements for receipt of Tribal Mobility Fund Phase I support prior to requesting the disbursement of any such support.<sup>51</sup> And finally, should it become authorized to receive Tribal Mobility Fund Phase I support, CSE Wireless will be required to report certain information to the Commission, the Universal Service Administrative Company (USAC), and relevant State or Tribal authorities for the area in which it is designated as an ETC pursuant to section 54.1009 of our rules.<sup>52</sup>

#### E. Public Interest Analysis

19. We find that CSE Wireless's participating in universal service programs in areas in which it becomes authorized to receive Tribal Mobility Fund Phase I support should provide a variety of benefits to consumers, including mobile voice and current or next generation broadband access.<sup>53</sup> In the *USF/ICC Transformation Order*, the Commission adopted support for advanced services as one of the principles on which it would base policies for the preservation and advancement of universal service.<sup>54</sup> Tribal Mobility Fund Phase I offers support in Tribal lands, areas that the Commission has determined lack current generation or better mobile voice and broadband service. Tribal Mobility Fund Phase I offers support through a competitive bidding process -- the lower are bids in the auction, the greater is the program's ability to support newly provided services. Enabling otherwise qualified parties to participate in this process may encourage more aggressive auction competition, thus lowering bids and permitting greater mobile coverage with the limited amount of support available in Phase I of the Tribal Mobility Fund.

20. We further find that the conditional designation of CSE Wireless as an ETC contingent upon CSE Wireless becoming authorized to receive support in Tribal Mobility Fund Phase I may provide additional public interest benefits. CSE Wireless states that it intends, in the event that it obtains Tribal

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<sup>47</sup> *Id.* at 27 and Exhibit C.

<sup>48</sup> *Id.* at 27-28 and Exhibit D.

<sup>49</sup> CSE Wireless Petition at 29-30.

<sup>50</sup> See 47 C.F.R. § 54.202(a); CSE Wireless Petition at 30-31.

<sup>51</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.1008(e).

<sup>52</sup> 47 C.F.R. § 54.1009(c).

<sup>53</sup> This Order in no way pre-judges whether any particular proposed service offering by CSE Wireless meets the requirements of the Commission's rules.

<sup>54</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17679 ¶¶ 43-45.



Mobility Fund Phase I funding in an area, to bring 3G wireless services to the subject area.<sup>55</sup> The expanded availability of advanced mobile wireless services would have important public safety and public health benefits.<sup>56</sup> An ETC with conditional designation will have the obligations of any other ETC receiving Tribal Mobility Fund Phase I support for the areas in which the condition is satisfied, including an obligation to make available Lifeline service to eligible low income consumers.<sup>57</sup>

21. Finally, we note that neither impact on the Universal Service Fund nor cream-skimming are concerns in this instance, in contrast to past designations of competitive ETCs under the identical support rule.<sup>58</sup> Pursuant to the *USF/ICC Transformation Order*, the identical support rule will no longer provide support to newly designated ETCs, and the budget for the Mobility Fund is fixed.<sup>59</sup> Accordingly, the requested designation is unlikely to have a substantial impact on the Universal Service Fund. The Commission's orders forbearing from the service area conformance requirement make clear that cream-skimming is not a concern when considering the petition of a party seeking conditional ETC designation for purposes of participating in Phase I of the Tribal Mobility Fund.<sup>60</sup>

#### F. Regulatory Oversight

22. We note that CSE Wireless is required under section 254(e) of the Act to use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." In the event that CSE Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I, it will have to certify compliance with this requirement and all other requirements for receipt of Tribal Mobility Fund Phase I support, prior to requesting the disbursement of any such support.<sup>61</sup> In addition, if it becomes authorized to receive Tribal Mobility Fund Phase I support, CSE Wireless must report certain information to the Commission, USAC, and relevant State or Tribal authorities for the area in which it is designated as an ETC pursuant to section 54.1009 of our rules.<sup>62</sup>

23. We find that reliance on CSE Wireless's commitments to meet these requirements is reasonable and consistent with the public interest and the Act.<sup>63</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that CSE Wireless satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

24. The Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used

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<sup>55</sup> CSE Wireless Petition at 6-7.

<sup>56</sup> *Id.* at 35-36.

<sup>57</sup> See 47 C.F.R. § 54.405 (ETC obligation to offer Lifeline service). CSE Wireless describes some potential Lifeline offerings in its petition. See CSE Wireless Petition at 20-26 and Exhibit E.

<sup>58</sup> The term "cream-skimming" refers to an entity offering service only to those customers who are the least expensive to serve. See Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881-82 ¶ 189 (1997) (subsequent history omitted).

<sup>59</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, 17830 ¶¶ 299 (Mobility Fund budget), 511 (eliminating identical support rule effective January 1, 2012).

<sup>60</sup> See *Tribal Mobility Fund Phase I Forbearance Order* at ¶ 18; see also *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7863 ¶ 18.

<sup>61</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.1008(e); see also CSE Wireless Petition, Exhibit C (Certification).

<sup>62</sup> 47 C.F.R. § 54.1009(c).

<sup>63</sup> See generally CSE Wireless Petition.

“only for the provision, maintenance, and upgrading of facilities and services” in the areas in which it is designated as an ETC.<sup>64</sup> CSE Wireless will be required to provide such records and documentation to the Commission and USAC upon request.<sup>65</sup> We further emphasize that if CSE Wireless fails to fulfill the requirements of the Act, the Commission’s rules, and the terms of this order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.<sup>66</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>67</sup>

#### IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91, 0.131, 0.291, and 0.331 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, 0.331, CSE WIRELESS IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER in the state of NORTH CAROLINA contingent upon CSE Wireless becoming authorized to receive Tribal Mobility Fund Phase I support, and limited to those areas in which it becomes so authorized; and

26. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted by the Office of the Secretary to the North Carolina Utilities Commission, the Eastern Band of the Cherokee Nation and the Universal Service Administrative Company; and

27. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Chief  
Wireline Competition Bureau

Roger C. Sherman  
Acting Chief  
Wireless Telecommunications Bureau

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<sup>64</sup> 47 U.S.C. §§ 220, 403.

<sup>65</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17864 ¶ 621; 47 C.F.R. § 54.1010; see also 47 C.F.R. § 54.417.

<sup>66</sup> See Federal-State Joint Board on Universal Service, *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, *Declaratory Ruling*, 15 FCC Rcd, 15168, 15174 ¶ 15 (2000); see also 47 U.S.C. § 254(e).

<sup>67</sup> See 47 U.S.C. § 503(b).